United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

676

BRIEF FOR APPELLANT

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,062

JOHNNIE CURRY, Appellant,

v.

EDGAR J. BROWN,
MAURIS W. PLATKIN, M.D., Appellees.

APPEAL FROM JUDGMENT OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Jerrold Scoutt, Jr.
600 Brawner Building
Washington, D.C. 20006

Attorney for Appellant
(Appointed by this Court)

March 10, 1970

* STATEMENT OF QUESTIONS PRESENTED

1. Whether the District Court erred in granting Appellees' motion for summary judgment against Appellant, an unrepresented mental patient confined in the maximum security division of Saint Elizabeths Hospital who had not been informed that failure to respond with affidavits might warrant entry of summary judgment against him?

2. Whether the District Court erred in granting Appellees' motion for summary judgment since they failed to establish that there was no genuine issue of material fact and that they were entitled to judgment as a matter of law?

* This case has not previously been before the Court.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

* Cases or authorities chiefly relied upon are marked by asterisks.

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JURISDICTIONAL STATEMENT

Johnnie Curry, Appellant, filed a civil complaint in the United States District Court for the District of Columbia on December 12, 1968, against Edgar J. Brown and Dr. Mauris M. Platkin, Appellees. On April 7, 1969, on behalf of Appellees, the United States Attorney filed a motion for summary judgment in accordance with the provisions of Rule 56 of the Federal Rules of Civil Procedure. On April 22, 1969, Judge McGuire entered an order granting Appellees' motion for summary judgment and dismissing the complaint. Appellant filed a notice of

appeal with the District Court on May 5, 1969, and on May 7, 1969, the District Court granted Appellant's request for leave to appeal without prepayment of costs. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1291 and 1294.

REFERENCES TO RULINGS

Order dated April 22, 1969 granting Appellees' motion for summary judgment.

STATEMENT OF THE CASE

The District Court entered summary judgment against Appellant, Johnnie Curry, an unrepresented mental patient confined in the maximum security division of Saint Elizabeths Hospital. The Court took no action to assure that Appellant's claims would receive fair, adequate, and meaningful consideration, nor did it inform him that failure to respond by affidavit might warrant granting of summary judgment against him. The order was entered solely on the basis of Appellant's complaint (Appendix) and Appellees' motion for summary judgment and supporting affidavit (Appendix) and documents. Since the District Court did not call for oral argument on the motion, there is no transcript available and the record in this case is very sparse; the following account of the events leading to this appeal is based on the aforesaid affidavit and supporting documents.

Appellant was committed to Saint Elizabeths Hospital on June 1, 1965, by order of the United States District Court for the District of Columbia pursuant to the provisions of 24 D.C. Code 301(d), as amended, having been found not guilty by reason of insanity on a charge of assault with a dangerous weapon (Crim. No. 385-65). Since Appellant's commitment, his Civil Service Disability pension of $146.58 a month and Veteran's Administration benefits of $20 a month, later increased to $30,

have been held in trust for him by the Hospital. At the time of this action he had over $4,000 in this account. The record does not indicate whether Appellant had any dependents.

In a letter dated December 4, 1967, addressed to Dr. David Harris, Acting Superintendent, Saint Elizabeths, Mr. Booker T. Smalley, attorney for Mr. Curry, asked that Dr. E. Y. Williams be permitted to examine Mr. Curry in connection with a Writ of Habeas Corpus proceeding involving the patient. (Habeas Corpus No. 448-67) Permission was granted and Dr. Williams examined Appellant. Subsequently, Mr. Smalley, in a letter addressed to Dr. Harris, February 13, 1968, forwarding Dr. Williams' bill of $200 for services rendered, asked that payment be made to Dr. Williams. After checking with the Finance Office to ascertain the status of Appellant's finances, but without obtaining Appellant's permission, on February 23, 1968, Dr. Platkin signed an authorization for payment of Dr. Williams' bill. Payment was made by the Finance Office by check dated February 27, 1968, drawn on the Treasury of the United States. On the same date, Appellant, pro se, filed a handwritten civil complaint in the District Court. Although the complaint was styled as a "Petition for Writ of Habeas Corpus", it was essentially a civil complaint alleging that on two separate occasions Mr. Brown and Dr. Platkin had made improper withdrawals from Appellant's account. The first claim concerned the aforementioned $200 payment to Dr. Williams, and the second, although not fully explained, involved an earlier payment to a Mrs. Dovey Roundtree, a lawyer.

On April 7, 1969, on behalf of Mr. Brown and Dr. Platkin, the United States Attorney filed a motion for summary judgment and the affidavit of Dr. Platkin in accordance with the provisions of Rule 56 of

the Federal Rules of Civil Procedure. Although this motion was served on the Appellant at Saint Elizabeths, he was not apprised of the requirements of the summary judgment rule, and he filed no responsive pleading.

On April 22, 1969, Judge McGuire entered an order granting Appellees' motion for summary judgment and dismissing the complaint.

STATUTES AND RULES INVOLVED

24 D. C. Code § 301(d) provides:

> "If any person tried upon an indictment or information for an offense, or tried in the juvenile court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, the court shall order such person to be confined in a hospital for the mentally ill."

24 U.S.C. § 165 provides in pertinent part:

> "The said disbursing agent, under the direction of the superintendent, shall have the custody of and pay out all moneys appropriated by Congress for Saint Elizabeths Hospital, or otherwise received for the purposes of the hospital, and all moneys received by the superintendent in behalf of the hospital or its patients, and keep an accurate account or accounts thereof. The said disbursing agent shall deposit in the Treasury of the United States, under the direction of the superintendent, all funds which may be intrusted to the latter by or for the use of patients which shall be kept in a separate account; and the said disbursing agent is authorized to draw therefrom, under the direction of the said superintendent, from time to time, under such regulations as the Secretary of Health, Education, and Welfare may prescribe for the use of such patients, but not to exceed for any one patient the amount intrusted to the superintendent on account of such patient. During the time that any pensioner shall be an inmate of Saint Elizabeths Hospital all money due or becoming due upon his or her pension shall be paid by the Veterans' Administration to the superintendent or disbursing agent of the hospital, upon a certificate by such superintendent that the pensioner is an inmate of the hospital and is living, and such pension money shall be by said superintendent or disbursing agent disbursed and used, under regulations to be prescribed by the Secretary of Health, Education and Welfare, for the benefit of the pensioner . ..."

28 U.S.C. § 1291 provides in pertinent part:

"The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, ... except where a direct review may be had in the Supreme Court."

28 U.S.C. § 1294 provides in pertinent part:

"Appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows:

(1) From a district court of the United States to the court of appeals for the circuit embracing the district."

31 U.S.C. § 725s (15, 16) provides in pertinent part:

"(a) The funds appearing on the books of the Government and listed in . . . this section shall be classified on the books of the Treasury as trust funds.

(15) Pension money, Saint Elizabeths Hospital (4 + 545).
(16) Personal funds of patients, Saint Elizabeths Hospital (4 + 546)."

FED. R. CIV. P. 8(f) provides:

"All pleadings shall be so construed as to do substantial justice."

FED. R. CIV. P. 17(c) provides in pertinent part:

"The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person."

FED. R. CIV. P. 53(a) provides in pertinent part:

"Each district court with the concurrence of a majority of all the judges thereof may appoint one or more standing masters for its district, and the court in which the action is pending may appoint a special master therein."

FED. R. CIV. P. 56(c) provides in pertinent part:

"The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

FED. R. CIV. P. 56(e) provides in pertinent part:

> "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

STATEMENT OF POINTS

1. The District Court erred in granting Appellees' motion for summary judgment against Appellant, an unrepresented mental patient confined in the maximum security division of Saint Elizabeths Hospital who had not been informed that failure to respond with affidavits might warrant entry of summary judgment against him.

2. The District Court erred in granting Appellees' motion for summary judgment since they failed to establish that there was no genuine issue of material fact and that they were entitled to judgment as a matter of law.

SUMMARY OF ARGUMENT

1. The District Court erred in granting Appellees' motion for summary judgment against Appellant, an unrepresented mental patient confined in the maximum security division of Saint Elizabeths Hospital who had not been informed that failure to respond with affidavits might warrant entry of summary judgment against him. The recently reaffirmed opinion of this Court in Hudson v. Hardy, No. 20908 (D.C. Cir. Feb. 14, 1968), aff'd on rehearing, No. 20908 (D.C. Cir. Feb. 12, 1970), held that it was error to enter summary judgment against an unrepresented prisoner

who had not been apprised of the requirements of the summary judgment rule. Since Appellant likewise was unrepresented, incarcerated, and uninformed of the requirements of summary judgment, Hudson requires that the summary judgment be vacated. Moreover, because our Appellant was mentally ill, there is at least a serious question whether he had any significant comprehension of the process to which he was being subjected. Surely, fairness and justice demand that Appellant, who bore the additional burden of mental illness, be afforded at least the same procedural safeguards as the Court of Appeals awarded the prisoner in Hudson.

2. The District Court erred in granting Appellees' motion for summary judgment since they failed to establish that there was no genuine issue as to any material fact and that they were entitled to judgment as a matter of law. Whether or not the Appellant submitted opposing affidavits, the burden was upon the Appellees, as the moving party, to establish that there was no genuine issue as to any material fact and that they are entitled to judgment as a matter of law. 6 MOORE, FEDERAL PRACTICE § 56.15 [3] (2d ed. 1966). The Platkin affidavit contained virtually no information regarding the Appellant's second claim concerning money allegedly wrongfully paid to Mrs. Dovey Roundtree, a lawyer. Appellees' motion for summary judgment and supporting papers did not show as a matter of law that, as trustees for Appellant's funds, they did not breach their fiduciary duty in making the challenged $200 payment to Dr. Williams.

ARGUMENT

I. THE DISTRICT COURT ERRED IN GRANTING APPELLEES' MOTION FOR SUMMARY JUDGMENT AGAINST APPELLANT, AN UNREPRESENTED MENTAL PATIENT CONFINED IN THE MAXIMUM SECURITY DIVISION OF SAINT ELIZABETHS HOSPITAL WHO HAD NOT BEEN INFORMED THAT FAILURE TO RESPOND WITH AFFIDAVITS MIGHT WARRANT ENTRY OF SUMMARY JUDGMENT AGAINST HIM.

A. Summary Judgment May Not Be Entered Against An Unrepresented, Incarcerated Person Not Informed Of The Requirements Of The Summary Judgment Rule.

In this case, the District Court granted Appellees' motion for summary judgment against Appellant, an unrepresented mental patient confined in the maximum security division of Saint Elizabeths Hospital. Although Appellees' motion was served on Appellant at Saint Elizabeths, he was not apprised of the requirements of the summary judgment rule, and he filed no responsive pleading. While the purpose of FED.R.CIV.P. 56(e) is to pierce the pleading in the ordinary civil case, this Court has recently held that the requirements of the summary judgment rule may

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1/ Summary judgment may be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED.R.CIV.P. 56(c). In opposing a motion for summary judgment which is supported by affidavits or other documentary evidence, a party "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." FED.R.CIV.P. 56(e).

2/ FED.R.CIV.P. 56(e) was amended in 1963 to overcome a line of cases in the Third Circuit which held that pleading allegations did create an issue barring summary judgment. Committee Note of 1963 to Subdivision (e). 6 MOORE, FEDERAL PRACTICE ¶ 56.01 [14] (2d ed. 1966). None of the Third Circuit Cases to which the Advisory Committee took exception involved an unrepresented, detained or mentally ill litigant.

not be fairly applied with strict literalness to a prisoner unrepresented by counsel and subject to the considerable handicaps of detention who has not been given fair notice of the requirements of the rule. Hudson v. Hardy, No. 20908 (D.C. Cir. Feb. 14, 1968), aff'd on rehearing, No. 20908 (D.C. Cir. Feb. 12, 1970) [hereinafter cited as Hudson].

In Hudson, the appellant, an inmate of the District of Columbia Jail, proceeding pro se, had filed a civil complaint in the District Court against the Director of the Department of Corrections and the Superintendent of the District of Columbia Jail. He asked for an order that would prevent appellees from continuing to subject him to certain "unjust and cruel disciplinary action" and to restore certain constitutional rights. Appellees filed a motion to dismiss or, in the alternative, for summary judgment which was granted by the District Court. Leave to appeal in forma pauperis was granted by the District Court, and appellant moved for appointment of counsel on appeal. The decision of the Court of Appeals vacating and remanding the judgment of the District Court was reached sua sponte by a motions panel on appellant's motion for appointment of counsel.

Citing its earlier opinion in Phillips v. United States Board of Parole, 352 F.2d 711 (D.C. Cir. 1965), the Court reasserted at page 5 "that the requirements of the summary judgment rule may not fairly be applied 'with strict literalness' to a prisoner unrepresented by counsel and subject to the handicaps . . . detention necessarily imposes upon a litigant." The Hudson panel focused upon the fact that the unrepresented appellant lacked the opportunity to comply with Rule 56(e) since he had not been notified that summary judgment would be entered against him if he

rested on his pleading.[3/] Deciding that Rule 56(e) was not meant as a trap for the unwary, the Court held at p. 5 "that before entering summary judgment against appellant, the District Court, as a bare minimum, should have provided him with fair notice of the requirements of the summary judgment rule. We stress the need for a form of notice sufficiently understandable to one in appellant's circumstances fairly to apprise him of what is required."

The Court, however, was careful to point out that in certain situations mere notice of the technical requirements of the summary judgment rule might not enable an unrepresented prisoner adequately to resist a motion for a summary judgment. In such cases, "the court's plain duty is to appoint counsel to assist him in defending the motion for summary judgement." Hudson at p. 6.

The Court closed by noting that the procedural safeguards which it prescribed for unrepresented prisoners resisting a summary judgment motion could produce administrative burdens on the Courts and the bar. In such cases, it directed the District Court to devise alternative means of dealing with prisoner suits which would nevertheless assure that their claims were afforded substantial justice, such as denying summary judgment and holding an evidentiary hearing, permitting the prisoner to appear and testify in his own behalf. Hudson at pp. 6-7.

3/ The Court also pointed out that even if Appellant had been apprised of his duties under Rule 56, he would have been severely handicapped in his search for rebutting documentary evidence because of his detention. Hudson at p. 6. Phillips turned upon the handicaps of detention and did not address itself to the more fundamental consequence of lack of notice.

Thus this Court has squarely held in Hudson v. Hardy, No. 20908 (D.C. Cir. Feb. 14, 1968), aff'd on rehearing, No. 20908 (D.C. Cir. Feb. 12, 1970) that it is reversible error strictly to apply the requirements of the summary judgment rule against an unrepresented prisoner who has not been apprised of his duties under the rule. Before the District Court may consider whether or not the moving party has established that there is no genuine issue as to any material fact and that he is entitled to judgment as a matter of law, it must insure that the opponent has had a fair opportunity to defend against the motion.

B. In Light Of The Decision Of This Court In Hudson, the District Court Clearly Erred In Granting Summary Judgment Against Appellant Who Besides Being Unrepresented, Detained, And Uninformed Of The Requirements Of The Summary Judgment Rule Bore The Additional Burden Of Mental Illness.

In Hudson the Court of Appeals was chiefly concerned with the fact that an unrepresented, detained, civil litigant, uninformed of the steps required to defend against a motion for summary judgment lacked both the opportunity and the facilities to provide the necessary documentary evidence to defeat the motion. As in Hudson, our Appellant brought a civil action unrepresented by counsel; and nothing in the record indicates that he had been informed that summary judgment would be granted against him for failure to respond to Appellees' motion and affidavit. Nor was Appellant afforded an opportunity to appear before the District Court and personally state his case. Moreover, since our Appellant was mentally ill, it is most probable that he had little or no comprehension of the process to which he was being subjected. In these circumstances, Appellant lacked the "opportunity" to comply with the summary judgment rule.

Even if Appellant could have been made to understand summary judgment procedures, as an inmate of the John Howard Division of Saint Elizabeths Hospital, the maximum security division, he clearly lacked the "facilities" to acquire the documentary evidence required to defeat Appellees' summary judgment motion and supporting affidavits. Like the prisoner in Hudson, the inmate in this case was severely handicapped by detention.

Surely, fairness and justice demand that our mentally ill Appellant be afforded at least the same procedural safeguards as the Court of Appeals awarded the prisoner in Hudson. Nor do we believe that these safeguards would result in undue administrative burdens on the courts or the bar. The flexible approach suggested in Hudson for dealing fairly with prisoner suits would be equally amenable to inmate suits. Besides, we feel that the use of a special guardian, as we explain below, is the proper approach to inmate suits; and we believe that such a procedure would result in minimal administrative difficulties.

Throughout the proceedings below, Appellant was a patient at Saint Elizabeths, having been committed as the result of a finding of not guilty by reason of insanity. While the record does not indicate that Appellant had been adjudicated incompetent, neither does it indicate that his competency had ever been established. Although Appellant's technical competence to sue was unknown, the fact that he was a mental patient at Saint Elizabeths was known to the District Court and surely raised the possibility of incompetency.

We believe that at the suggestion of incompetency the District Court was required to appoint a guardian ad litem or at least to give deliberate consideration to the matter. The fact that no steps were taken

to protect the interests of our mentally ill Appellant makes the literal application of the summary judgment against him even less appropriate.

FED.R.CIV.P. 17(c) provides, inter alia, that "/t/he court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person." Rule 17(c) applies if the litigant has been found insane. Zaro v. Strauss, 167 F.2d 218 (5th Cir. 1948). Although the rule does not require the court to appoint a guardian ad litem, deliberate consideration must be given to the matter. 2 BARRON & HOLTZOFF, FEDERAL PRACTICE & PROCEDURE § 488 (Wright ed. 1961). A judgment may be reversed where the trial court never considered the lack of a guardian.[4/]

We suggest that Rule 17(c) requires the District Court give deliberate consideration to the appointment of a guardian ad litem upon receipt of a complaint from an unrepresented mental patient. Whereas a mentally competent civil litigant possesses the facilities to make out his claim for relief, a mentally ill litigant will often lack the ability adequately to express himself, although his claim may be highly meritorious.

4/ Roberts v. Ohio Cas. Ins. Co., 256 F.2d 35 (5th Cir. 1958). Roberts, the leading case on the subject, spelled out the meaning of Rule 17(c) at p. 39:

> "(1) as a matter of proper procedure, the court should usually appoint a guardian ad litem; (2) but the court may, after weighing all the circumstances, issue such order as will protect the minor in lieu of appointment of a guardian ad litem; (3) and may even decide that such appointment is unnecessary, though only after the court has considered the matter and made a judicial determination that the infant is protected without a guardian."

The administrative burden of protecting a mentally ill litigant would be slight if the trial court adopted a procedure similar to that approved by the New York Court of Appeals in Sengstack v. Sengstack, 4 N.Y. 2d 502, 176 N.Y.S. 2d 337, 151 N.E. 2d 887 (1958). Sengstack involved a separation suit brought by wife against husband. The wife stated in her complaint that she was mentally ill; however, she had not been adjudicated incompetent. The trial court appointed a special guardian to investigate and report what the situation was and what should be done to protect plaintiff. The highest court of New York approved of this procedure in the following language:

> "It does not mean that the courts shut their eyes to the special need of protection of a litigant actually incompetent but not yet judicially declared such. There is a duty on the courts to protect such litigants. We think the duty was performed by the court in this case when it appointed as plaintiff's special guardian a learned and conscientious lawyer and directed him to make an investigation and report to the court as to what steps should be taken to protect plaintiff's interests." 176 N.Y.S. 2d at p. 342.

We believe that a procedure similar to that adopted in New York should be instituted in the District Courts for the District of Columbia Circuit to protect the interests of mentally ill litigants. The lower court could appoint a special master to investigate the claim of such a person and to report to the court as to its merit under the authority of FED.R.CIV.P. 53. If the court then determines that the claim is valid, it should appoint a guardian ad litem[5/] or take such steps as to protect plaintiff's interests as required by FED.R.CIV.P. 17(c).

5/ Even without statutory authority, courts have inherent power to appoint guardians ad litem as an incident of their jurisdiction. Hatch v. Riggs National Bank, 361 F.2d 559, 565 (D.C. Cir. 1966).

Thus with the additional factor of Appellant's mental illness which makes his appeal all the more compelling, this case is on all fours with Hudson and reversal of Appellees' summary judgment is required.

II. THE DISTRICT COURT ERRED IN GRANTING APPELLEES' MOTION FOR SUMMARY JUDGMENT SINCE THEY FAILED TO ESTABLISH THAT THERE WAS NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND THAT THEY WERE ENTITLED TO JUDGMENT AS A MATTER OF LAW.

A. Appellees Did Not Establish That There Was No Genuine Issue As To Any Material Fact.

Besides establishing that he is entitled to judgment as a matter of law, the party moving for summary judgment must "show that there is no genuine issue as to any material fact . . ." FED.R.CIV.P. 56(c). It is well settled that the moving party has the burden of demonstrating that there is no genuine issue as to any material fact. 6 MOORE, FEDERAL PRACTICE § 56.15 [3] (2d ed. 1966).

Appellant's complaint presented two claims but Appellees' motion for summary judgment and supporting affidavit contained virtually no information on the second claim. Nevertheless, the District Court order of April 22, 1969 entered summary judgment against both claims and dismissed Appellant's entire action.

Despite the fact that Appellant is an unlettered mental patient, his complaint clearly set forth a claim concerning some money which had been paid to a lawyer, a Mrs. Dovey Roundtree. (Appendix: Appellant's complaint, p. 4, paragraph 2) While the exact nature of this claim is not clear, it apparently involved an improper disbursement of Appellant's funds by Dr. Platkin.[6/] In any event, it raised a genuine issue of material

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6/ Pleadings are to be construed so as to do substantial justice. FED. R.CIV.P. 8(f).

fact which Appellees' motion for summary judgment and supporting affidavit failed to contradict or to even mention. Thus Appellees did not meet their burden of showing that there was no genuine issue as to any material fact.

B. Appellees Did Not Establish That They Were Entitled To Judgment As A Matter Of Law.

In addition to demonstrating that there is no genuine issue as to any material fact, a party seeking summary judgment must show that he is entitled to judgment as a matter of law. FED.R.CIV.P. 56(c). The moving party, of course, has the burden of establishing his right to judgment as a matter of law. 6 MOORE, FEDERAL PRACTICE § 56.15 [3] (2d ed. 1966). Appellees have not carried that burden.

While Appellant, unassisted by counsel, styled his complaint as a "Petition for Writ of Habeas Corpus," the real basis of his claim concerning the $200.00 which Appellees paid Dr. Williams from Appellant's funds was that it constituted a breach of their fiduciary duty as trustees of those funds.[7/]

As a patient of Saint Elizabeths Hospital, Appellant's funds are held in trust by Appellees.[8/] A trustee is under a duty in administering

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7/ Under the modern theory of pleading of the Federal Rules of Civil Procedure, the complaint suffices despite the fact that the plaintiff has misconceived the proper legal theory of the claim so long as he is entitled to relief on any theory. IA BARRON & HOLTZOFF, FEDERAL PRACTICE & PROCEDURE § 276.1 (Wright ed. 1961).

8/ Funds of patients of Saint Elizabeths Hospital are accepted by the Superintendent of Saint Elizabeths Hospital and deposited by the Hospital's disbursing agent in the Treasury of the United States pursuant to the provision of section 165 of 24 United States Code which authorizes the Superintendent to receive funds "in ... behalf ... of patients" and which authorizes the disbursing agent, under the supervision of the Superintendent, to deposit in the Treasury of the United States funds "intrusted . . . by or for the use of patients" and to make expenditures from such funds for "the use of such patients." The patients' funds held pursuant to section 165 of 24 United States Code are held in trust. 31 U.S.C. § 725s (15, 16).

the trust to exercise the degree of care and skill that a man of ordinary prudence would exercise in dealing with his own property. II SCOTT ON TRUSTS § 174 (3d ed. 1967). Where the beneficiary is a mental patient, there would seem to be implicit in the trustee's general duty of a care an obligation not to release funds to satisfy any improvident debts of the patient.[9/] The very purpose of putting the funds in trust is to preserve them and to insure that they are not squandered by the patient. The trustee would clearly have the duty and the power to disavow any unreasonable contracts of the patient except those for necessaires. While legal and medical assistance furnished to secure the release of a patient from a mental hospital are ordinarily necessaires, they are not if there is no reasonable probability that the proceedings will be successful. In re Hayes' Guardianship, 8 Wis. 2d 32, 98 N.W. 2d 430 (1959).

The Appellees did not meet their burden of showing that as a matter of law the $200.00 payment to Dr. Williams was not a breach of trust. Dr. Platkin's affidavit merely asserted that it was the "general policy" of the Superintendent to approve withdrawal of a patient's funds to pay a psychiatrist employed in connection with a habeas corpus proceeding by the patient so long as the fee is reasonable and the remaining funds will be sufficient to meet the patient's needs. The affidavit did not explain what standards were used to determine the reasonableness of the fee. Nor did it suggest that the Hospital had made any inquiry into whether or not

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9/ The record indicates that Appellant did not authorize the withdrawal, but even if he had, the trustee is not relieved of liability for breach of trust if he acted at the request of a mentally disabled beneficiary. Washington Loan & Trust Co. v. Colby, 108 F.2d 743 (D.C. Cir. 1939).

the services were furnished with a reasonable probability of success.[10] The most serious fault in Dr. Platkin's affidavit, however, is that it refers to no formal guidelines or regulations governing the withdrawal of a patient's funds other than the broad statutory language of section 165 of 24 United States Code which requires withdrawals to be "for the use" of the patient.[11] While a mental patient clearly should have a reasonable opportunity to prove that he is entitled to release,[12] the Hospital as a fiduciary should have formal guidelines to regulate the withdrawal of patients' funds and to furnish standards for determining when legal or medical services are necessary and reasonable. Thus Appellees have failed to show that they exercised a sufficient degree of care and skill in dealing with Appellant's funds; therefore, they did not meet their burden of demonstrating that they were entitled to judgment as a matter of law.

10/ The permanency of Appellant's mental illness and whether or not he had been recently examined would be important considerations.

11/ Section 165 provides inter alia that Veterans Administration benefits "shall be . . . disbursed and used, under regulations to be prescribed by the Secretary of Health, Education and Welfare . . ." Some of Appellant's funds are VA benefits and Dr. Platkin's affidavit did not state that these VA funds were not the source of the payment to Dr. Williams, nor did it cite to any pertinent HEW regulations. Our research indicates that despite the mandate of section 165, such regulations have not been promulgated.

12/ Under the ruling of Bolton v. Harris, 395 F.2d 642 (D.C. Cir. 1968), patients in Saint Elizabeths Hospital because of acquittal by reason of insanity are entitled to periodic examinations by the Hospital staff to determine their eligibility for release. If any one of the examining physicians believes that the patient should no longer be hospitalized, he is entitled to a court hearing. While the Bolton decision was careful to preserve the patient's rights to bring a writ of habeas corpus, it would seem that the periodic examination procedure would be sufficient for most patients and should cause the Hospital carefully to scrutinize the necessity and reasonableness of habeas corpus actions which may senselessly deplete the funds of suggestible, anxious-to-be-released, mental patients.

III. CONCLUSION

For the foregoing reasons, the judgment of the lower court should be reversed and the case remanded for new trial.

Respectfully submitted,

Jerrold Scoutt, Jr.
600 Brawner Building
Washington, D.C. 20006

Attorney for Appellant
(Appointed by this Court)

March 10, 1970

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief has been hand delivered this 10th day of March, 1970, to Thomas A. Flannery, United States Attorney.

Jerrold Scoutt, Jr.

Appendix A

Transcription of Pages 4 and 5 of Appellant's Handwritten Complaint:

(4)

To the Honorable United States District Court for the District of Columbia:

The petition for Johnnie Curry, "Hosp. No. 82-992" respectfully shows:

1. The petitioner makes application herein for a Writ of Habeas Corpus in that a Mr. Edgar J. Brown, unlawfully paid a Dr. E. Y. Williams, $200.00 from my account, from the Finance Offices of "A" Building, Saint Elizabeths Hospital, Washington, D.C. 20032. Mr. Brown, paid the $200.00 without me (Johnnie Curry) signing a voucher.

2. I have a letter, that a Dr. Mauris W. Platkin wrote concerning some money that I had paid a lawyer, a Mrs. Dovey Roundtree. The letter dated 12-17-65. The letter stated "If I wanted to carry my complaint any fougher (sic) that I would have to do it myself." The Hospital does not exercide (sic) in relations between patients and thir (sic) attorneys.

3. Wherefore, the petitioner prays that a Writ of Habeas Corpus be issue here in directed to the Said Dr. David J. Harris, Acting Superintendent of Saint Elizabeths Hospital, Washington, D. C. 20032, Commanding him to produce the body of the petitioner Johnnie Curry, "Hosp. No. 82-992" before this Court at a time and place, to be specified in Said Writ to the end, that this Court may inquire into the course of the petitioner $200.00. If the Hospital can't get Dr. E. Y. Williams, to reimburse the $200.00, the Hospital should make the $200.00 good by replacing the $200.00 to my account.

Wherefore, petitioner respectfully prays to be helped and assisted in his cause of redress of grievances, by the Honorable United States District Court for the District of Columbia, Washington, D. C.

Respectfully Submitted,

Johnnie Curry
Petitioner Pro Se.

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Johnnie Curry v. Mr. Edgar J. Brown, Supervisor of the Finance Office Dr. Mauris W. (sic) Platkin, Acting Clinical Director, John Howard Pavilion (sic)	)	Civil Action No. 3089-68

Affidavit of Mauris M. Platkin, M.D.

DISTRICT OF COLUMBIA)
)
CITY OF WASHINGTON)

Mauris M. Platkin, being duly sworn, deposes and says:

1. I am employed by Saint Elizabeths Hospital as Acting Clinical Director of John Howard Division, the Maximum Security Division of Saint Elizabeths Hospital, a Federally operated hospital for the care of the mentally ill, located in the District of Columbia.

2. I hold the degree of Doctor of Medicine from the University of Geneva, Geneva, Switzerland. I am licensed to practice medicine in the District of Columbia.

3. I am a Diplomate in Psychiatry of the American Board of Psychiatry and Neurology.

4. In my capacity as Acting Clinical Director, John Howard Division, it is my responsibility, as representative of the Superintendent of Saint Elizabeths in John Howard Division, to supervise all matters that affect the care and treatment program of

patients assigned to that Division, including such matters as: approving the request for examination by a private psychiatrist either from a patient himself or from someone authorized to act in his behalf; and approving or authorizing the withdrawal of funds from a patient's account at the Hospital, either upon his own request or upon the request of someone authorized to act in his behalf, where it is shown to my satisfaction that the funds are to be used for the benefit of the patient and the withdrawal will not deplete the patient's account below an amount considered necessary to meet his personal needs at the Hospital.

5. I have examined the clinical files of Saint Elizabeths patient Johnnie Curry (a/k/a John Curry), a 48-year old male, and find:

(a) that the patient was committed to Saint Elizabeths Hospital, June 1, 1965, by order of the United States District Court for the District of Columbia pursuant to the provisions of 24 D. C. Code 301(d), as amended, having been found not guilty by reason of insanity on a charge of assault with a dangerous weapon (Crim. No. 385-65).

(b) that in an answer to a petition for a Writ of Habeas Corpus (Habeas Corpus No. 240-68) filed by the Hospital, November 14, 1968, the patient was described as suffering from "Paranoid Personality" and it was stated that "because of such illness is likely to injure himself

or others if allowed to go at liberty." The petition for the aforementioned Writ of Habeas Corpus was dismissed December 23, 1968, and the patient remanded to the custody of Saint Elizabeths Hospital where his hospitalization has continued since that time. In the opinion of the Hospital staff, the patient is still suffering from the condition described above.

(c) that in a letter, dated December 4, 1967, addressed to Dr. David Harris, Acting Superintendent, Saint Elizabeths, by Mr. Booker T. Smalley, attorney for Mr. Curry, Mr. Smalley asked that Dr. E. Y. Williams be permitted to examine Mr. Curry in connection with a Writ of Habeas Corpus proceedings involving the patient (Habeas Corpus No. 448-67). Permission was granted and Dr. Williams examined the patient. Subsequently, Mr. Smalley, in a letter addressed to Dr. Harris February 13, 1968, forwarding Dr. Williams' bill of $200 for services rendered, asked that payment be made to Dr. Williams. After first checking with the Finance Office to ascertain the status of the patient's finances, on February 23, 1968, I signed an authorization for payment of Dr. Williams' bill. Payment was made by the Finance Office by check dated February 27, 1968 drawn on the Treasury of the

United States. (Attached to and made a part of this affidavit are copies of Mr. Smalley's letters of December 4, 1967 and February 13, 1968 and Dr. Williams' bill dated February 9, 1968 and the authorization form dated February 23, 1968.)

6. I have examined the patient's financial account at the Hospital and find:

(a) that on February 23, 1968, the day that payment of Dr. Williams' fee was authorized by me, the patient Johnnie Curry had credited to his account at the Hospital $4,275.60 and except for providing for his own clothing and personal needs he had no known outstanding financial obligations at that time; and,

(b) that the major source of the $4,275.60 on deposit was a Civil Service Disability pension of $146.58 a month which was deposited with the Hospital by the patient beginning February 3, 1967 and continuing each month thereafter and an institutional award of $20 a month from the Veterans' Administration which was paid directly to the Hospital by the Veterans' Administration beginning July 1, 1965 and continuing each month thereafter until February 3, 1967 when it was increased to $30, the amount now received monthly by the

Hospital. (attached to and made a part of this affidavit is a copy of Mr. Curry's financial account at the Hospital.)

7. I further depose and state that funds of patients of Saint Elizabeths Hospital are accepted by the Superintendent of Saint Elizabeths Hospital and deposited by the Hospital's disbursing agent in the Treasury of the United States pursuant to the provision of section 165 of 24 United States Code which authorizes the Superintendent to receive funds "in . . . behalf . . . of patients" and which authorizes the disbursing agent, under the supervision of Superintendent, to deposit in the Treasury of the United States funds "intrusted . . . by or for the use of patients" (emphasis supplied) and to make expenditures from such funds for "the use of such patients." Furthermore, it has been the general policy of the Superintendent to approve a withdrawal of a patient's funds for payment of the fee of a private psychiatrist as being "for the use" of the patient where the services of the psychiatrist were provided in connection with a writ of habeas corpus proceedings involving the patient, and the fee is a reasonable one, and, where such withdrawal does not deplete the patient's account below an amount considered necessary by the Hospital to meet the patient's present and foreseeable future needs.

8. I further depose and state that to the best of my knowledge and belief the withdrawal of $200 from the account of Johnnie Curry for payment to Dr. E. Y. Williams was in accord with Hospital policy and in my opinion represented a reasonable exercise

of the responsibility vested in the Hospital by the statute.

Mauris M. Platkin, M.D.
Acting Clinical Director
John Howard Division
Saint Elizabeths Hospital

Sworn and subscribed to before me this day of , 1969.

Notary Public, D. C.

My Commission expires_____